

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

QUINTIN R. CROSS,

Plaintiff,

v.

PATRICK COVELLO, et al.,

Defendants.

No. 2:23-cv-0336 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. On March 2, 2023, the court recommended that plaintiff's motion for leave to proceed in forma pauperis be denied. Plaintiff has now paid the filing fee. Accordingly, the court will vacate the court's March 2, 2023, findings and recommendations and plaintiff's motion for leave to proceed in forma pauperis will be denied as moot.

Plaintiff seeks relief against employees of the California Department of Corrections under 42 U.S.C. § 1983. The court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
3 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
5 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
6 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
7 Cir. 1989); Franklin, 745 F.2d at 1227.

8 In order to avoid dismissal for failure to state a claim a complaint must contain more than
9 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause
10 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,
11 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory
12 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim
13 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A
14 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
15 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.
16 at 678. When considering whether a complaint states a claim upon which relief can be granted,
17 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and
18 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416
19 U.S. 232, 236 (1974).

20 The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon
21 which relief can be granted. Therefore, the complaint must be dismissed. Good cause appearing,
22 however, the court will grant plaintiff leave to amend.

23 If plaintiff chooses to amend, he should consider the following:

24 1. Plaintiff’s allegations against defendants are too vague, for the most part. In an
25 amended complaint, plaintiff must allege in specific terms how each named defendant is
26 involved. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link
27 or connection between a defendant’s actions and the claimed deprivation. Rizzo v. Goode, 423
28 U.S. 362 (1976). Furthermore, vague and conclusory allegations of official participation in civil

1 rights violations are not sufficient, Ivey v. Board of Regents, 673 F.2d 266, 268 (9th Cir. 1982),
2 and there is no respondeat superior liability, Taylor v. List, 880 F.2d 1040, 1045 (9th Cir. 1989).

3 2. Prison officials generally cannot retaliate against inmates for exercising First
4 Amendment rights. Rizzo v. Dawson, 778 F.2d 527, 531 (9th Cir. 1985). Because a prisoner's
5 First Amendment rights are necessarily curtailed, however, a successful retaliation claim requires
6 a finding that "the prison authorities' retaliatory action did not advance legitimate goals of the
7 correctional institution or was not tailored narrowly enough to achieve such goals." Id. at 532.
8 The plaintiff bears the burden of pleading and proving the absence of legitimate correctional
9 goals for the conduct of which he complains. Pratt v. Rowland, 65 F.3d 802, 806 (9th Cir. 1995).
10 Also, in order to state a claim for retaliation, plaintiff must point to facts indicating a causal
11 connection between the adverse action and the protected conduct. Watison v. Carter, 668 F.3d
12 1108, 1114 (9th Cir. 2012).

13 3. The United States Supreme Court has held that "an unauthorized intentional
14 deprivation of property by a state employee does not constitute a violation of the procedural
15 requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful
16 postdeprivation remedy for the loss is available." Hudson v. Palmer, 468 U.S. 517, 533 (1984).
17 Thus, where the state provides a meaningful postdeprivation remedy, as California does, only
18 authorized, intentional deprivations constitute actionable violations of the Due Process Clause.
19 An authorized deprivation is one carried out pursuant to established state procedures, regulations,
20 or statutes. Piatt v. McDougall, 773 F.2d 1032, 1036 (9th Cir. 1985); see also Knudson v. City of
21 Ellensburg, 832 F.2d 1142, 1149 (9th Cir. 1987).

22 4. Plaintiff complains about past conditions of confinement. Plaintiff can state a claim
23 under the Eighth Amendment concerning past conditions of confinement only if he points to facts
24 suggesting that he was subjected to cruel and unusual punishment. More specifically, he must
25 allege that he suffered a sufficiently serious injury as the result of a prison official's deliberate
26 indifference to a substantial risk of serious physical harm. Farmer v. Brennan, 511 U.S. 825, 834-
27 38 (1994).

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1 5. In order to state a cognizable claim for violation of due process during things such as
2 custody classification level hearings or prisoner disciplinary proceedings, plaintiff must allege
3 facts which suggest that he was deprived of a protected liberty interest. Such liberty interests are
4 “generally limited to freedom from restraint which, while not exceeding the sentence in such an
5 unexpected manner as to give rise to protection by the Due Process Clause of its own force,
6 [citations omitted], nonetheless imposes atypical and significant hardship on the inmate in
7 relation to the ordinary incidents of prison life.” Sandin v. Connor, 515 U.S. 472, 484 (1995).

8 6. Plaintiff is advised that under 42 U.S.C. § 1997e(a) “[n]o action shall be brought with
9 respect to prison conditions under section 1983 of this title, or any other Federal law, by a
10 prisoner confined in any jail, prison, or other correctional facility until such administrative
11 remedies as are available are exhausted.” It appears plaintiff did not exhaust administrative
12 remedies with respect to some portions of his complaint as underlying events occurred in close
13 time to the filing of the complaint.

14 7. Under Rule 20 of the Federal Rules of Civil Procedure, plaintiff cannot bring unrelated
15 claims against different defendants. Simply put, plaintiff cannot join claims against defendant B
16 that have nothing to do with those brought against defendant A.

17 8. Prisoners do not have “a separate constitutional entitlement to a specific prison
18 grievance procedure.” Ramirez v. Galaza, 334 F.3d 850, 860 (9th Cir. 2003) (citing Mann v.
19 Adams, 855 F.2d 639, 640 (9th Cir. 1988)). Accordingly, the prison grievance procedure does
20 not confer any substantive constitutional rights upon inmates and actions in reviewing and
21 denying inmate appeals generally do not serve as a basis for liability under section 1983. Id.

22 Plaintiff is informed that the court cannot refer to a prior pleading in order to make
23 plaintiff’s amended complaint complete. Local Rule 220 requires that an amended complaint be
24 complete in itself without reference to any prior pleading. This is because, as a general rule, an
25 amended complaint supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th
26 Cir. 1967). Once plaintiff files an amended complaint, the original pleading no longer serves any
27 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim
28 and the involvement of each defendant must be sufficiently alleged.

1 Finally, the court notes that plaintiff has filed a motion for a preliminary injunction. Since
2 plaintiff's complaint does not state a claim for relief, injunctive or otherwise, the motion will be
3 denied without prejudice. Plaintiff is free to file a motion for preliminary injunctive relief with
4 his amended petition, but plaintiff is advised the motion will be denied if the amended complaint
5 does not state a claim for injunctive relief. Also, generally speaking, a complaint states a claim
6 for injunctive relief if current conditions of confinement violate federal rights. Injunctive relief is
7 generally not appropriate to redress past wrongs.

8 Accordingly, IT IS HEREBY ORDERED that:

- 9 1. The court's March 2, 2023, findings and recommendations (ECF No. 7) are vacated.
10 2. Plaintiff's motion for leave to proceed in forma pauperis (ECF No. 2) is denied as
11 moot.
12 3. Plaintiff's complaint is dismissed.
13 4. Plaintiff is granted thirty days from the date of service of this order to file an amended
14 complaint that complies with the requirements of this order, the Civil Rights Act, the Federal
15 Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must bear the
16 docket number assigned this case and must be labeled "Amended Complaint." Failure to file an
17 amended complaint in accordance with this order will result in a recommendation that this action
18 be dismissed.
19 5. Plaintiff's motion for a preliminary injunction (ECF No. 3) is denied without prejudice
20 as described herein.

21 Dated: April 6, 2023

22 
23 CAROLYN K. DELANEY
24 UNITED STATES MAGISTRATE JUDGE
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